



UNITED STATES PATENT AND TRADEMARK OFFICE

ST  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,719	05/16/2001	Devin Eugene Mix	12929.1059US01	2781

23552            7590            07/24/2002  
MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

EXAMINER
----------

JULES, FRANTZ F

ART UNIT	PAPER NUMBER
----------	--------------

3617

DATE MAILED: 07/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/859,719	MIX ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Frantz F. Jules	3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8, 10-12 and 14-20 is/are rejected.

7) Claim(s) 9 and 13 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3,6</u>	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 17, line 10, the phrase "a less opaque liquid" is confusing as it is unclear how it relates to previously recited a less opaque liquid recited above.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11, 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hess et al'489.

Claims 11, 14-15

Hess et al'489 teach all the limitations of claims 11, 14-15 by showing in figs 1-2 a flame simulation apparatus (10) comprising a translucent screen (42) having a front surface and a back surface, at least one bobble-flame (58) coupled to a support panel, a device (60) that moves the bobble-flame, and a light source (30) to reflect the light off of the bobble-flame and onto the back surface of the translucent screen (42) to generate an

Art Unit: 3617

image of a flickering flame effect that is viewable from the front surface of the translucent screen.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7, 12, 16, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al'489 in view of Morton.

Claims 1-7, 12, 16, 18-19

Hess et al teach all the limitations of claims 1-7, 12, 16, 18-19 except for an apparatus for image display comprising a lenticular screen with a movable image layer by a motion imparting device positioned behind the front panel of a fireplace. Morton discloses a lenticular screen with a movable image layer by a motion imparting device in an apparatus for image display, see abstract section. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Hess et al to include the use of a lenticular screen with a movable image layer by a motion imparting device behind the front panel of his advantageous apparatus for image display as taught by Morton in order to protect the lenticular screen and image layer assembly from being damage while increasing the number of images that can be displayed.

Art Unit: 3617

7. Claims 8, 10, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al'489 in view of Kashyap.

Claims 8, 10, 20

Hess et al teach all the limitations of claims 8, 10, 20 except for an apparatus for image display having a phase change material connected to a voltage source positioned in the front panel of a fireplace. The general concept of using a phase change material in structure is well known in the art as illustrated by Kashyap. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Hess et al to include the use of a phase change material connected to a voltage source in the front panel of his advantageous apparatus for image display as taught by Kashyap in order to control the intensity of optical radiation that passes through the fiber.

***Allowable Subject Matter***

8. Claims 9, 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Gottfried-Gottfried et al, Higuchi et al, Steenblik et al are cited to show related apparatus having phase change material.

Art Unit: 3617

Seki, Gulick, Boden are cited to show a related system having a lenticular screen.

Martin et al, Rehberg, Hess et al'636, Bristow are cited to show related fireplace system having flame simulation apparatus.

Kumagai is cited to show a related image display device having a movable image screen.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Frantz F. Jules  
Examiner  
Art Unit 3617

FFJ

July 18, 2002



S. JOSEPH MORANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600